

R.D. # 0009-03  
Bridgewater, N.J.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**DAVITA INC.<sup>1</sup>**

Employer

and

**CASE 22-RC-12370**

**LOCAL 262, UFCW, RWDSU,  
AFL-CIO-CLC**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

**I. INTRODUCTION**

The Petitioner seeks to represent a unit of about 13 to 17 employees including all full-time and regular part-time Licensed Practical Nurses (LPNs), Patient Care Technicians (PCTs), clerks and Reuse Technicians employed by the Employer at its Bridgewater,<sup>2</sup> New Jersey facility, excluding all administrative assistants, BioMed Technicians, Registered Nurses (RNs), Social Workers, Dieticians, other professional employees, Charge nurses, Clinical Coordinators, management employees, guards and

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The Bridgewater facility is also referred to on the record as the Bound Brook facility.

supervisors as defined in the Act, and all other employees.<sup>3</sup>

The Employer contends that employees in the additional categories of Administrative Assistant and BioMed Technician share a community of interests with the petitioned-for employees and must therefore be included in the directed unit. The Employer further contends that the scope of the unit must be expanded to include the Employer's seven facilities that are currently operating in the State of New Jersey. Finally, although the Employer does not oppose the inclusion of regular part time employees in the unit, it contends that the determination whether per diem employees are "regular" and eligible to vote should be made pursuant to the Board's standard as set forth in *Saratoga County Chapter NYSARC, Inc.*, 314 NLRB 609 (1994).

Based on the following facts and analysis, I find appropriate a single facility unit of employees at the Employer's Bridgewater facility. I further find that Administrative Assistants and BioMed Technicians share a community of interests with the petitioned-for employees such that their exclusion would not be appropriate. Finally, I shall apply the formula set forth in *Marquette General Hospital, Inc.*, 218 NLRB 713 (1975), not *Saratoga County Chapter NYSARC, Inc.*, above, to determine the voter eligibility of per diem employees within the included classifications.

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<sup>3</sup> Although the Petitioner petitioned to represent "Clerks," the record does not indicate that the Employer employs clerks other than Administrative Assistants, whom the Petitioner specifically seeks to exclude. Notably, on the last day of hearing, Petitioner's counsel took the position that it was seeking a unit of LPNs, PCTs and Reuse

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>4</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>5</sup>
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>6</sup>
3. The labor organization involved claims to represent certain employees of the Employer.<sup>7</sup>

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Technicians, and did not mention clerks. Accordingly, I find that the Petitioner is not seeking to represents "Clerks."

<sup>4</sup> Briefs filed by the parties have been considered.

<sup>5</sup> The Employer in its brief renews its motion, made during the hearing, to transfer this case to another Region. The Employer also renews its motion to have its original written motion, the undersigned's order denying that motion and the Employer's objection thereto made part of the record. I note that the Employer's original motion was accepted as Employer's Exhibit 1 and is part of the record. I hereby grant the Employer's Motion to place my order denying the Employer's original motion and the Employer's objection thereto into the record. Accordingly, I designate as Board Exhibit 2 my August 21, 2003 order denying the Employer's motion to transfer the case to another Region. Finally, I hereby deny the Employer's renewed motion to transfer the case to another Region for the reasons previously stated in my order of August 21, 2003 designated as Board Exhibit 2.

<sup>6</sup> The Employer is a Delaware Corporation engaged in dialysis and related services at its Bridgewater, Eatontown, Neptune, Middletown, Brick, Cape May and Atlantic City, New Jersey locations, the only facilities involved herein.

<sup>7</sup> The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.
5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:<sup>8</sup>

**All full-time and regular part-time Licensed Practical Nurses, Patient Care Technicians, Reuse Technicians, Administrative Assistants and BioMed Technicians employed by the Employer at its Bridgewater, New Jersey facility, excluding all registered nurses, Social Workers, dietitians, professional employees, managerial employees, guards and supervisors as defined by the Act, and all other employees.**

## **II. BACKGROUND**

The Employer is engaged in the provision of dialysis to patients with End Stage Renal Disease (ESRN) at numerous locations around the country. Dialysis is the process of extracting liquid and toxins from ESRN patients because their kidneys have ceased to perform that function. This process is accomplished by pumping blood out of a patient's body and through a dialysis machine that cleanses it. In addition, the Employer offers peritoneal dialysis training and services for patients to perform dialysis treatments themselves at home. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Employer's facilities are geographically divided into 11 divisions and further subdivided into 35 regions, encompassing 550 facilities and 14,000 employees around the country. An Operational Vice President (OVP) heads each

division, a Regional Director (RD) heads each region, and a Facility Administrator (FA) heads each facility. The Employer also employs at each facility a nurse in charge responsible for direct supervision of staff employees.<sup>9</sup> Further, the Employer

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<sup>8</sup> At hearing, the Petitioner agreed to proceed to an election in the alternative bargaining unit directed herein.

<sup>9</sup> The title of the nurse in charge varies depending on the size of the facility. The nurse in charge generally holds the title of Clinical Coordinator in large facilities and Charge Nurse in smaller facilities. The record does not clearly establish whether large facilities, including Bridgewater, employ both a Clinical Coordinator and a Charge Nurse.

maintains at each dialysis clinic a "governing body" responsible for the management and operation of that facility. The governing body of each New Jersey facility includes the Employer's OVP, RD and FA.

The Employer's North Star Division encompasses New Jersey, Pennsylvania, Maryland and Delaware. Pamela Hudson is the OVP for the North Star division; her office is located in Pennsylvania. New Jersey is a separate region within the North Star division, with eight facilities located (from North to South) in Bridgewater, Somerset, Middletown, Eatontown, Neptune, Brick, Atlantic City and Cape May.<sup>10</sup> Katherine Madormo is the RD of the New Jersey Region; her office is located in the Eatontown facility. Hudson and Madormo testified for the Employer at hearing, as did Steven Cooper, the Employer's Assistant General Counsel of Labor and Employee Relations.

Among the New Jersey facilities, only Bridgewater and Eatontown provide peritoneal training as well as standard dialysis treatments. The record does not reflect which employees provide such peritoneal training. The Somerset facility is a new location that is not yet operational and employs no employees in the relevant classifications.<sup>11</sup> Accordingly, the Employer does not seek to include the Somerset facility in the unit at this time.

Other than the geographic corporate structure described above, the Employer maintains centralized human resources (referred to as "People Services") and

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<sup>10</sup> The Eatontown facility is also referred to on the record as the Atlantic Artificial Kidney Center or "AAKC."

accounting departments. From the People Services department, the Employer assigns to each division a People Services Manager (PSM) to assist with personnel matters and a Recruiter. People Services are also involved in setting company-wide employee benefits and personnel policies such as retirement benefits, health plans, stock options, attendance bonuses, tuition reimbursement, internet usage, email policy, leave of absences and the like.

The Employer employs at its various facilities professional employees including RNs, Social Workers and Dieticians. The Petitioner does not seek to represent professional employees employed at the Bridgewater facility. Rather, the Petitioner seeks to represent a unit of certain non-professional employees in the classifications of LPN, PCT and Reuse Technician.

### **III. SINGLE FACILITY v. REGION-WIDE UNIT**

#### **A. Facts**

The Bridgewater facility is the northernmost Employer location in New Jersey, approximately 10 miles from Somerset, 40 to 60 miles from Middletown, Eatontown, Neptune and Brick, 150 miles from Atlantic City, and 200 miles from Cape May. Madormo testified that the drive from Bridgewater takes about 15 or 30 minutes to Somerset, 45 minutes or an hour to Middletown, an hour to Eatontown, an hour and 15 minutes to Brick, an hour and a half to Atlantic City, and about two hours and 45 minutes to Cape May. Madormo testified that she is in almost daily contact with the FAs that report to her and that she visits each facility within her

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<sup>11</sup> In its brief, the Employer reserves the right to seek to clarify the

Region at least once per month. Although Hudson also visits facilities within the North Star division, the record does not reflect how often.

The hours kept by New Jersey facilities vary depending upon the number of patients they service. Bridgewater is generally open from 6:00 a.m. to 8:00 or 9:00 p.m., Monday through Saturday. Some of the other facilities are also open Monday through Saturday, but their daily hours differ. The newer New Jersey facilities are only open Monday, Wednesday and Friday.<sup>12</sup>

The Employer employs non-professional employees in company-wide classifications of LPN, PCT, Reuse Technician, BioMed Technician and Administrative Assistant. The job requirements, descriptions and duties of these employees are essentially the same within their respective classification in all the Employer's facilities. As discussed more fully below, the primary responsibilities of these employees are as follows. LPNs and PCTs provide dialysis treatment to patients. BioMed Technicians maintain and repair dialysis machines and other medical equipment in the facility. Reuse Technicians clean, test and store the artificial kidneys called "dialyzers" after they are used. Administrative Assistants perform various clerical functions associated with patient care and general office maintenance.

The Employer employs in these non-professional classifications approximately 13 to 17 employees in Bridgewater and 67 to 74 employees Region-

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directed unit to include the Somerset facility.

<sup>12</sup> The record does not reflect the specific hours of facilities other than Bridgewater.

wide. The number of employees at each facility and in each classification, including per diem employees, was approximated by Madormo as follows:

	<b>LPNs</b>	<b>PCTs</b>	<b>Reuse</b>	<b>Admin</b>	<b>BioMed</b>	<b>Total</b>
<b>Bridgewater</b>	2	7 to 11	1	2	1	<b>13-17</b>
<b>Somerset</b>	0	0	0	0	0	<b>0</b>
<b>Eatontown</b>	6 or 7	12 or 13		2	3	1
	<b>24-26</b>					
<b>Middletown</b>	0	1	0	1	0	<b>2</b>
<b>Neptune</b>	0	3	0	0	0	<b>3</b>
<b>Brick</b>	0	2	0	1	1	<b>4</b>
<b>Atlantic City</b>	1	13 or 14		1	1	1
	<b>17-18</b>					
<b>Cape May</b>	<u>0</u>	3	0	1	0	<b>4</b>
	9-10	41-47	4	9	4	<b>67-74</b>

The Bridgewater BioMed Technician has been helping to prepare the Somerset facility for operation and the Atlantic City BioMed Technician is also responsible for Cape May. In addition, one BioMed Technician is assigned each weekend to be on-call to cover all eight regional facilities, as needed. BioMed Technicians are generally on-call once every third weekend. Employees are also allowed to cross-train to hold more than one classification.<sup>13</sup>

The Employer employs one per diem LPN and four per diem PCTs. The per diem LPN works in Eatontown. The Eatontown, Bridgewater, Cape May and Atlantic City facilities each employ one per diem PCT. Per diem employees are called into

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<sup>13</sup> The Employer introduced into evidence a list of unnamed employees who have been cross-trained in more than one classification, along with the facilities where they have worked from April 5, 2003 to July 4, 2003. None of the cross-trained employees worked in Bridgewater.

work to cover for regular employees who are absent. Per diem employees perform identical functions, work identical hours and are otherwise indistinguishable from their regular counterparts.

The Employer's extensive personnel policies are uniformly applicable to its employees, other than policies affected by State law, and Cooper testified that divisional PSMs act as a quality control person to insure that centralized policies are correctly administered. Employees are also eligible for the same benefits company-wide, with the exception of per diem employees who do not receive benefits. Hudson testified that per diem employees receive three or four dollars more per hour than other employees within their classification in lieu of benefits.

The record evidence does not establish that the Employer maintains standard company or regional pay scales by classification or otherwise, and the Employer refused to disclose the pay rates of specific employees or classifications at hearing. Madormo testified that the wages of non-professional employees generally range from Reuse Technicians at the low end, to PCTs/Administrative Assistants, to LPN/BioMeds at the high end, with a differential of about 25% between each of the three levels. Likewise, the work hours of employees differ from facility to facility.<sup>14</sup>

The Employer introduced into evidence its policies and procedures for the orientation and training of employees, which are largely standardized company-wide.

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<sup>14</sup> In that regard, LPNs and PCTs generally work the entire day from opening to closing, which hours differ because the hours kept by each

The Employer conducts certain training centrally in locations other than the employees' primary facility. However, the initial orientation of new employees is conducted in his or her facility; the facility has limited discretion in performing certain aspects of the orientation, such as the showing of particular video tapes. Employee "preceptors" are also assigned to train new LPNs and PCTs; this training is generally conducted at the facility.<sup>15</sup>

Although the Employer's policies and procedures are significantly centralized, FAs and local supervisors retain a degree of autonomy and authority over various day-to-day decisions, including personnel matters. Thus, workdays, work hours, overtime, vacation and other leave are authorized and assigned at the local level.<sup>16</sup> FAs and local supervisors also prepare employee evaluations; Madormo testified that she does not always review those evaluations. The RD is responsible for making merit raise and other wage determinations. However, Madormo testified that she bases those wage decisions in part upon employee evaluations and other advice she receives from her FAs. FAs and local supervisors are authorized to administer certain discipline including verbal warnings without first consulting the RD. In addition, FAs and local supervisors may sign and issue more severe discipline, up to and including termination, upon consultation and approval by

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facility are different. Further, the BioMed Technicians work as needed and are not assigned regular hours.

<sup>15</sup> Madormo testified that an employee hired into a busy facility will sometimes be sent to a slower facility with his or her preceptor so as not to slow down or interfere with treatment.

<sup>16</sup> Although the Employer asserts that this local authority is circumscribed by centralized guidelines, it refused to offer these guidelines into evidence.

upper management and People Services. Employee personnel files are also maintained locally at the facility where each employee works.

FAs are also significantly involved in the hiring process. Although the divisional Recruiter pre-screens and interviews employment applicants and refers certain applicants to a facility for consideration when an opening becomes available,

FAs then interview all applicants at the facility, as may facility supervisors. The RD may also interview the applicant, either by telephone or in person. Although the Employer's witnesses described hiring decisions somewhat differently, they all agreed that FAs are consulted and make hiring recommendations that are duly considered for approval by upper management.<sup>17</sup> In addition, Cooper testified that FAs can request the creation of new positions, which may be authorized by the RD and OVP.

In support of its proposed multilocation unit, the Employer presented evidence of interchange among employees in the New Jersey facilities. The Employer's witnesses testified that employees in relevant classifications work temporarily in more than one facility when it is necessary to cover for employees who are absent and to assist when the volume of work at a particular facility requires. Only BioMed Technicians are regularly assigned to cover more than one facility, once every third weekend. However, Madormo could recall just one instance between May 1 and August 1, 2003 when a BioMed Technician from another facility had come to work at Bridgewater; she could recall no instance when the Bridgewater BioMed Technician worked at another facility. The Employer's witnesses also testified that employees of two facilities that recently closed were allowed to interview at other facilities; some were permanently transferred as a result. All

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<sup>17</sup> Cooper testified that existing jobs are filled by FAs and local supervisors, who may consult their RD, with ultimate approval being granted by the OVP. OVP Hudson testified that hiring determinations are made collectively by the FA, RD and divisional Recruiter. Madormo testified that FAs consult with the RD regarding hiring

employee interchange among the New Jersey facilities, be it permanent or temporary, has been voluntary.

In addition, the Employer introduced into evidence as Employer's Exhibit 22 (Ex. 22) a list of unnamed employees who it claims have worked in more than one facility since April 4, 2003.<sup>18</sup> Although requested to by the Hearing Officer and the Petitioner, the Employer refused to identify the names of these employees or the source of the information; further, the list fails to state the dates, duration and number of instances of employees interchange. However, Madormo did describe certain instances of interchange that are listed on Ex. 22. According to Ex. 22, as explained by Madormo, employee interchange involving the Bridgewater facility can be reduced to the following. One BioMed Technician temporarily covered both Eatontown and Bridgewater while the BioMed Technician at one of those facilities was on vacation.<sup>19</sup> One Reuse Technician and one PCT also worked in Bridgewater on a temporary basis. Two other BioMed Technicians worked in Bridgewater and other facilities during their on-call weekends. One PCT was hired permanently by Bridgewater from the Employer's Linden facility, which closed in April 2003.

Other than employee interchange, Madormo testified that facilities frequently borrow equipment from each other, but could not recall when or what has been borrowed in and out of Bridgewater. Information and standard forms, including

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decisions; the RD ultimately approves the decision and then notifies the OVP.

<sup>18</sup> The document purports in its heading to cover the period April 4, 2003 to August 2, 2003, but includes interchange since August 2.

personnel documents, are accessible at all facilities through the Employer's integrated computer system. In addition, Madormo testified that she arranges for FAs to cover more than one facility on a temporary basis due to absences and openings at that position. Certain facilities also share the same medical director, an Area BioMed Coordinator, a nurse quality control manager and medical records consultants.<sup>20</sup> All employees have access to a common "hotline" administered by a third party who refers employee complaints and concerns to the appropriate department or division. The Employer's facilities are required by law to have a backup agreement with another facility in the event the former cannot provide treatment for some reason; the New Jersey facilities have such backup agreements among each other. Bridgewater has a backup agreement with Eatontown. However, there is no evidence that patients have been transferred among facilities.

**B. Analysis**

Section 9(b) of the Act states that the "Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof."

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather the Act requires only that the unit be appropriate. The Board has held that in determining whether a petitioned-

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<sup>19</sup> The record does not reflect which BioMed Technician was on vacation, the one employed in Eatontown or in Bridgewater.

for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994).

Here, the Petitioner has requested a unit composed only of certain non-professional employees at the Bridgewater facility. The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome “by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit.” *Id.* The factors that the Board examines in making this determination include: past bargaining history; geographical location of the facilities in relation to each other; extent of interchange of employees; work contacts existing among the several groups of employees; extent of functional integration of operations; degree of centralized versus local control over daily operations and labor relations; and the differences, if any, in the skills and functions of employees. *Id.* at 42, citing *Sol’s*, 272 NLRB 621 (1984). These factors must be weighed in resolving the unit contentions of the parties. The burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, above at 429.

Based upon a review of the record, I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single-facility unit. In this regard, the fact that no other labor organization seeks to represent the

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<sup>20</sup> Neither the Employer nor the Petitioner seeks to include these

employees on a broader basis is a factor that supports the requested unit. *New Britain Transportation*, 330 NLRB 397, 398 (1999).

As to geography, the Bridgewater facility is significantly removed from all the Employer's other terminals, particularly Atlantic City and Cape May. Even the facility closest to Bridgewater, Middletown, is at least 40 miles and a drive of 45 minutes to an hour.<sup>21</sup> While geographical separation is not necessarily conclusive, it is a strong indicator that a single-location unit is appropriate. *Dixie Belle Mills*, 139 NLRB 629 (1962); *Van Lear Equipment, Inc.*, 336 NLRB No. 114 (2001). In *D & L Transportation*, 324 NLRB 160 (1997), the Board found a single bus terminal location to be appropriate where, *inter alia*, the other terminals were between 3 and 21 miles apart. See also *New Britain Transportation*, above (separation of six and 12 miles).

Clearly, there is significant evidence of standardized and centralized control of labor and employment policies, procedures and benefits. The RD, People Services and OVP are also generally consulted and must approve any major personnel actions including hiring, firing, suspension, transfers, promotions, pay raises and the like. However, each facility employs an FA and nurse in charge who are responsible for the day-to-day management and direct supervision of all unit employees. FAs and local supervisors have authority to administer certain discipline and perform evaluations without consulting upper management. FAs and local

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individuals in the bargaining unit.

supervisors are also consulted, make effective recommendations and may administer more severe discipline, up to and including termination, upon consultation and approval by upper management and People Services. Indeed, such decisions often emanate from the facility level. In addition, FAs are members of the governing body of their respective facilities, which

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<sup>21</sup> Somerset is closer to Bridgewater than Middletown, about 10 miles away, but the Employer does not seek to include this facility in its proposed unit because it is not yet operational.

is responsible for all management and operational decisions of the dialysis unit. Employee personnel files are also kept at the facility where each employee works.

While the facts describe an operation that is centralized and standardized, a unit less than company-wide can be appropriate, notwithstanding a high degree of centralized administration. *L'Eggs Products Inc.*, 236 NLRB 354 (1978). Here, the presence of the FA and local supervisors with their substantial authority is evidence that individuals at Bridgewater are vested with significant autonomy over local terms and conditions of employment. *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988) (single facility unit found appropriate where local manager conducted initial screening for new hires and was consulted on major disciplinary issues); *Esco Corp.*, 298 NLRB 837 (1990) (single facility unit found appropriate despite absence of statutory supervisor assigned to excluded facility, where leadman oversaw excluded operation).

Moreover, despite centralization, the Employer's various clinics are not so substantially interdependent or functionally integrated that a system-wide unit is required. *Southern California Water Company*, 228 NLRB 1296, 1297 (1977) ("[O]perations are not so functionally integrated that a cessation of work in one [division] would cause a system wide shutdown of operations"). Here, the evidence does not suggest that the Employer's operations at its other facilities are reliant on a day-to-day basis upon the Bridgewater operations or vice versa.

I also find a lack of substantial employee interchange involving the Bridgewater facility in classifications included in the directed unit. The Employer

failed to produce evidence regarding the dates, duration or number of incidents of employee interchange and would not disclose the names or primary locations of employees who have worked in more than one facility. As the Petitioner argued at hearing, the Employer's ambiguous information limited the Petitioner's ability to verify and rebut the Employer's information and to cross-examine the Employer's witnesses. The minimal showing also made it difficult to determine the percentage of the work that has been performed by Bridgewater employees at other facilities and vice-versa. The party opposing the single-facility presumption has the burden of presenting sufficient evidence to rebut that presumption and must establish the context and percentage of interchange among the total number of employees. See *New Britain Transportation*, 330 NLRB 397 (1999). The Employer's ambiguous evidence of interchange does not satisfy its burden.<sup>22</sup>

Further, even if the Employer's evidence were given significant weight, that evidence would be insufficient to establish substantial employee interchange. Only

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<sup>22</sup> In a recent case, *Trane*, 339 NLRB No. 106 (July 29, 2003), the Board distinguished *New Britain Transportation*, supra, finding that an employer overcame the presumptive appropriateness of a single facility unit despite evidence of employee interchange that was of only a general nature. However, in *Trane*, the Board determined that the lack of specific evidence as to interchange was combined with other factors, including the absence of any local management or supervision at one facility indicating that there was no local autonomy at that facility. That is not the case here. In *Trane*, the employer's witness testified to 'hundreds' of transfers between facilities each year, an easily observable pattern which, if true, the Board described as 'unchallenged.' Here, the Employer's witnesses described much more limited interchange. When the Petitioner attempted to verify or rebut this evidence, the Employer refused to identify the transferees or their primary facilities. Thus, unlike the situation described by the Board in *Trane*, the Petitioner herein clearly attempted to challenge the fragmentary evidence presented by the Employer.

four employees have been temporarily transferred to perform work at Bridgewater and other facilities since April 4, 2003, of a region-wide unit workforce exceeding 65 employees. A temporary interchange of employees in such limited numbers does not

establish that Bridgewater relies upon the work force of other facilities or is relied upon by other facilities in the region to operate an integrated enterprise. *New Britain Transportation*, 330 NLRB 397 (1999) (200 instances of temporary interchange do not approach the degree of significant interchange where Employer employs over 190 employees). Compare *Purolator Courier Corp.*, 265 NLRB 659, 661 (1982) (interchange factor met where 50 percent of the work force came within the jurisdiction of other facilities on a daily basis); *Dayton Transport Corp.*, 270 NLRB 1114 (1984) (presumption rebutted where there were approximately 400-425 temporary employee interchanges between facilities in one year among a workforce of 87). Likewise the permanent transfer to Bridgewater of a single employee from a facility that closed, after that employee was interviewed for hire like a new employee, does not constitute the type of interchange that requires a finding that the single facility presumption has been overcome.

Moreover, herein all transfers - both short-term and long-term - are voluntary. The Board gives less weight to voluntary interchange in determining whether employees from different locations share a common identity. *D&L Transportation*, above at 162, fn. 7, citing *Dayton-Hudson Corp.*, 227 NLRB 1436, 1438 (1977).

In sum, I find that the significant autonomy vested in local management, the considerable geographical separation of the Bridgewater facility from the Employer's other facilities and the lack of substantial employee interchange outweigh the centralized control of the Employer's labor policies. Therefore, I find that the single-location presumption has not been rebutted and that the requested unit scope is appropriate.<sup>23</sup>

#### **IV. THE APPROPRIATE BARGAINING UNIT AT BRIDGEWATER**

##### **A. THE BRIDGEWATER FACILITY**

The Bridgewater operation is located on one floor of an office building. The patient treatment area is in a large room with individual dialysis stations separated by curtains, with the nurses' station along one of the walls in full view of the dialysis stations. There is a telephone and computer at the nurses' station which are used by employees, including the Administrative Assistants.

Behind the nurses' station, off the treatment area, are separate rooms for the storage of medical records and the preparation of medication. The treatment area is

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<sup>23</sup> The Employer also argues that a multilocation unit must be directed because a single facility unit would cause undue disruption of its operating model in New Jersey. More specifically, the Employer contends that a single unit cutting against a "centrally administered, highly integrated operation throughout ... New Jersey" whereby "patients, supplies, equipment and [employees] move from facility to facility" would "expose the Employer to a less competitive business model." However, as discussed above, I find that the Employer has failed to establish its burden of proving that its Regional operation which includes Bridgewater is so integrated that a single facility unit is not appropriate. In that regard, the Employer produced only minimal and ambiguous evidence of managerial, patient or employee interchange, equipment sharing and other factors suggesting codependence. Accordingly, I reject the Employer's argument that a single facility unit determination will cause disruption to its business and its delivery of healthcare services.

also adjacent to the reuse room, where dialyzers are cleaned, tested and stored. The reuse room has a counter with reuse machines and a computer used during the reuse procedure. The facility also contains an office space, patient waiting area, storage space for things other than medication and a conference room. The office space is

separated from the waiting area by a window and contains a desk with a computer, telephone, fax machine and stationery supplies on it. The office space is used by the Social Worker, Dietician and Administrative Assistants, all of whom share the desk and equipment. The FA has a separate office with a door that locks. Only the Administrative Assistants and Social Worker have access to the FA's office.

**B. PETITIONED-FOR EMPLOYEES**

As noted above, the principal duty of LPNs and PCTs is to provide dialysis treatment to patients on the patient care floor.<sup>24</sup> In so doing, an LPN or PCT attaches the dialyzer to the dialysis machine and sets the machine for a designated amount of weight loss by the patient. An LPN or PCT then attaches the patient to the dialyzer using two large needles and tubes. The patient's blood is pumped through the tubes and a membrane in the dialyzer, which removes and disposes down a drain liquids and toxins from the body. An LPN or PCT monitors the patient's condition and the machine's operation throughout the treatment and documents information on a flow sheet. One flow sheet is completed for each treatment. An LPN or PCT submits the completed flow sheet to the Administrative Assistant. Once the proper weight loss is achieved by removal of liquid from the patient's body, an LPN or PCT removes the patient and the dialyzer from the dialysis machine. The LPN or PCT places the dialyzer in a sealed plastic bag and either brings it to the reuse room or gives it directly to the Reuse Technician to disinfect, test and store, as described below. When the patient returns for another treatment, an LPN or PCT rinses

sterilant from the dialyzer, tests it for sterilant residue and attaches it to the machine for reuse. Reuse Technicians are primarily responsible for cleaning the dialyzer in the reuse room for future use by the patient.<sup>25</sup> Thus, after a patient has been treated, a Reuse Technician cleans the dialyzer of blood, tests it for proper performance, fills it with sterilant solution and stores it. In addition to their primary functions, LPNs, PCTs and Reuse Technicians perform certain ancillary functions as assigned. These functions include mixing, monitoring and testing bicarbonate solutions, dialysate solutions and water used in the course of treatment. They also disinfect equipment, monitor the temperature of the refrigerator, prepare specimen containers for lab sampling and make notes in the refrigeration and water treatment logs.

LPNs and PCTs generally work three days a week from 6:00 a.m. when the facility opens until about 8:00 or 9:00 p.m., when it closes. The Reuse Technicians' hours are 8:00 a.m. or 9:00 a.m. until closing. Reuse Technicians have a later starting time than LPNs and PCTs because reuse cannot begin until after the first group of patients has been treated. According to Madormo, LPNs are paid about 25% more than PCTs, who are paid 25% more than Reuse Technicians. All non-professional employees at Bridgewater have common benefits, report to the same managers and supervisors and wear the same uniforms.

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<sup>24</sup> PCTs administer treatment in much the same manner as LPNs, except they cannot administer medication.

<sup>25</sup> Each patient's physician proscribes a specific type of dialyzer; the patient is treated with a particular dialyzer of that type on an ongoing basis.

### C. THE BIOMED TECHNICIAN

#### 1. Facts

The Bridgewater BioMed Technician is primarily responsible for repairing and maintaining all technical equipment used at the facility, including the dialysis machines, reuse equipment, reuse computer, water treatment system, cardiac monitors and fusion pumps. The BioMed Technician is generally notified of a mechanical problem by the treating employee and may discuss the problem with that employee. The BioMed Technician will then either repair the equipment on the floor or in a separate area in the storage room.<sup>26</sup>

Other than maintaining and repairing equipment, the BioMed Technician trains new Reuse Technicians and certifies them as competent. He/she may also substitute for a Reuse Technician when necessary. The BioMed Technician is also responsible for reviewing various documents, including the dialysis flow sheets and water treatment logs used by petitioned-for employees to ensure that safety and technical procedures are being followed. If the BioMed Technician finds that such documents are not being completed correctly or reflect a procedural error by the clinical staff, he or she will notify the appropriate employee in order to rectify the deficiency.

BioMed Technicians do not have assigned hours, but instead perform work when needed for the facilities they cover. The Employer attempts to assign BioMed Technicians 40 hours of work per week. Further, as discussed above, BioMed

Technicians are on-call about every third weekend to cover all the New Jersey facilities. Madormo testified that BioMed Technicians are paid in the same wage range as LPNs.

## 2. Analysis

Based upon the record as a whole and the foregoing, I find that the BioMed Technician shares a community of interest with other petitioned-for employees, and must be included in the unit. The BioMed Technician appears to have significant contact with LPNs and PCTs on the patient care floor regarding repairs to equipment and completion of technical documents. The BioMed Technician also trains new Reuse Technicians and covers for Reuse Technicians when necessary. The BioMed Technician shares a working knowledge of facility equipment with the petitioned-for employees who operate them and he works under the same managers and supervisors as those employees. The BioMed Technician receives the same benefits as other employees and is paid in the same wage range as LPNs. I am also mindful of the fact that were the BioMed Technician to be excluded, he could not obtain representation in a separate unit on his own.<sup>27</sup> Accordingly, I find that the BioMed Technician shares a significant community of interest with petitioned for employees and I shall include him in the directed unit.

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<sup>26</sup> The record does not reflect how much time the BioMed Technician spends on the treatment floor.

<sup>27</sup> It is contrary to Board policy to certify a representative for bargaining purposes in a unit consisting of only one employee, as here. *Roman Catholic Orphan Asylum*, 229 NLRB 251 (1977); *Teamsters Local 115 (Vila-Barr Co.)*, 157 NLRB 588 (1966).

**D.     ADMINISTRATIVE ASSISTANTS**

***1.     Facts***

The two administrative assistants in Bridgewater perform various clerical

functions associated with patient care and office maintenance. In that regard, Administrative Assistants perform intake by registering patients for treatment, setting up their charts and entering each patient's demographic and insurance information into the Employer's computer system. They also prepare lab containers for samples and package those containers for mailing to the lab. Administrative Assistants receive flow sheets from the clinical staff to insure they are complete and reconcile them with treatment logs that are used for billing. If the flow sheet requires a correction or added information, the Administrative Assistant returns the document to the clinical employee that prepared it for correction. Administrative Assistants may also order medical supplies.

Other than these functions associated with patient care, Administrative Assistants perform general office duties such as answering phones, taking messages, filing, updating information on the computer, running errands, taking meeting minutes and the like. Administrative Assistants are not assigned to assist a single manager or employee, but work for the entire staff. Madormo testified that the administrative assistants work primarily at the nurses' station in the treatment area, estimating that 70% of their time is spent there. Administrative Assistants also perform work in the office space and the conference room.

## 2. Analysis

Based upon the record as a whole and the foregoing, I find that the two Administrative Assistants share a community of interest with other petitioned-for employees and must be included in the unit. Administrative Assistants work on the

same floor and spend about 70% of their time in the same treatment room as the patient care staff. Administrative Assistants process flow sheets that care providers prepare during the course of treatment and have a certain degree of work related contact with LPNs and PCTs when they need to clarify information on those documents. Administrative Assistants are also tangentially involved in the patient care process and have contact with the patient care staff by performing intake, preparing lab samples for mailing and ordering medical supplies.

Administrative Assistants receive the same benefits as all other employees and Madormo testified that they are paid in the same wage range as PCTs. Although Administrative Assistants do not work as lengthy a shift as petitioned-for employees, their shift falls within the hours worked by LPNs, PCTs and Reuse Technicians. Therefore, Administrative Assistants are regularly present at the facility and in close proximity to other petitioned-for employees. Administrative Assistants also work under the same managers and supervisors as other unit employees. Based on the foregoing, I find that the Administrative Assistants share a community of interest with other employees the Petitioner seeks to represent and I shall include them in the unit. *CGE Caresystems, Inc.*, 328 NLRB 748 (1999).

**V. PER DIEM EMPLOYEES AND THE REGULAR PART-TIME CALCULATION**

The parties agree that regular part-time employees should be included in the unit. However, the Employer contends that the Board should adopt a standard for voter eligibility under which per diem employees, in the same classifications as employees included in the unit, be included if they are “regularly scheduled” within

the meaning of *Saratoga County Chapter NYSARC, Inc.*, above. In that case, the Board held that it would apply its *Davison-Paxon* guidelines as discussed below.

In determining the status of on-call employees in the health care industry, the Board has utilized various eligibility formulae as guidelines to distinguish “regular” part-time employees from those whose job history with an employer is sufficiently sporadic that it is most accurately described as “casual.” *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990). In *Marquette General Hospital*, 218 NLRB 713, 714 (1975), the Board devised an equitable formula that was designed to determine eligibility where the facts indicated there was significant disparity in the number of hours worked by that employer's on-call nurses. For instance, in *Marquette*, some on-call nurses worked as many as 540.5 hours per quarter, while others worked as few as 23. Under the *Marquette* formula, employees are only eligible to vote in the election if they work at least 120 hours in either of the quarters immediately preceding the election. *Id.* at 714. However, where the on-call employees, as a group, all appear to work on a regular basis, the Board usually has found a more liberal standard applicable. *Davison-Paxon Co.*, 185 NLRB 21, 24 (1970); *V.I.P. Movers*, 232 NLRB 14, 15 (1977); *Riverside Community Memorial Hospital*, 250 NLRB 1355, 1356 (1980); *West Virginia Newspaper Publishing Co.*, 265 NLRB 446 (1982). See also *Newton-Wellesley Hospital*, 219 NLRB 699, 703 (1975). In *Sisters of Mercy*, where the on-call nurses worked on a regular basis and there was no evidence of the significant disparity in the hours worked of the on-call nurses as found in *Marquette*, the Board found the *Davison-Paxon* formula to be more

appropriate. As a result, on-calls were found to be eligible if they regularly averaged 4 hours or more per workweek during the quarter prior to the digibility date.

*Sisters of Mercy*, above at 484.

The Employer introduced into evidence a document which lists the hours of each per diem LPN and PCT for the period of April 1, 2003 to August 1, 2003 Per diem hours for that period is as follows:

<b>Per Diem PCT or LPN</b>	<b>Hours Worked (April 1 to August 1, 2003)</b>
Bridgewater PCT	505.64
Cape May PCT	633.59
Atlantic City PCT	Hours not Provided Began work on July 30, 2003
Eatontown PCT	234.04
Eatontown LPN	294.33

Therefore, as in *Marquette*, above, the per-diem nurses here have exhibited a significant disparity in their work hours. Therefore, I find that it is appropriate to apply that formula in the instant situation.

Of course, the above presumes that per diems have a sufficient community of interest with regular employees to be included in the first place. Here, the record disclosed that per-diem LPNs and PCTs perform work that is identical to that of the

regular LPNs and PCTs, under the same supervision. All per diem employees also appear to log significant hours. While the per-diem employees do not share the same fringe benefits as other employees, I find that this factor does not detract from the substantial community of interest they share with the other unit employees. Under these circumstances, I find that per-diem LPNs and PCTs possess a strong community of interest with their regular counterparts. *St. Francis Hospital, Inc.*, above; *Milwaukee Childrens Hospital Assn.*, 255 NLRB 1009 (1981); *Newton-Wellesley Hospital*, above.

## **VI. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 262, UFCW, RWDSU, AFL-CIO-CLC**.

## **VII. LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **September 18, 2003**. No extension of time to file this list shall be granted except in extraordinary

circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

### **VIII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **September 25, 2003**.

Signed at Newark, New Jersey this 11<sup>th</sup> day of September, 2003.

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Gary T. Kendellen, Regional Director  
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